

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARIA FRONTADO

Claimant

VS.

RUBBERMAID SPECIALTY PRODUCTS

Respondent

Self-Insured

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Docket No. 217,058

ORDER

Respondent appealed Administrative Law Judge Nelsonna Potts Barnes' September 3, 1999, preliminary hearing Order.

ISSUES

The Administrative Law Judge found claimant suffered from major depression as well as a psychogenic pain disorder directly related to the physical injuries she sustained while employed by the respondent. She authorized Dr. Jorge Beber to treat claimant for her psychological disorders.

On appeal, in its application for review, respondent specified the issue for Appeals Board review as, "Arise out of and in the course of employment." In its brief, respondent first argues that claimant failed to prove her psychological problems are directly traceable to her physical work-related injuries. Second, the respondent argues if claimant does have psychological problems, those problems are related to physical injuries she sustained during employment she performed after her employment with respondent was terminated.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board makes the following findings and conclusions:

There seems to be no dispute that claimant suffered work-related bilateral upper extremity and shoulder injuries while employed by the respondent. Claimant claims she suffered those injuries on December 16, 1995. Respondent provided claimant with medical treatment, and claimant was eventually released with permanent restrictions and a permanent functional impairment rating.

Because there was no agreement on claimant's permanent functional impairment, the Administrative Law Judge ordered claimant to undergo an independent medical examination by

Philip R. Mills, M.D. The doctor saw claimant on June 15, 1998. In addition to claimant's physical injuries, Dr. Mills diagnosed claimant with depression.

As a result of that diagnosis, claimant's attorney had claimant undergo a psychological evaluation by T. A. Moeller, Ph.D., a licensed psychologist. Dr. Moeller saw claimant on December 3, 1998, and January 27, 1999. In a report finalized on June 15, 1999, Dr. Moeller diagnosed claimant with bona fide major depression as well as a psychogenic pain disorder. The doctor opined that claimant's psychological problems were directly related to her physical injuries that occurred while she was employed by the respondent. In the preliminary hearing Order, that is the subject of this appeal, the Administrative Law Judge appointed Dr. Jorge Beber as the authorized physician to treat claimant's psychological problems.

The first issue the Appeals Board will address is whether it has jurisdiction to review the issue raised by the respondent on appeal from a preliminary hearing order. The Appeals Board only has jurisdiction to review preliminary hearing issues if the party alleges that the administrative law judge exceeded his or her jurisdiction.¹ This includes review of issues identified in K.S.A. 1998 Supp. 44-534(a) as jurisdictional issues. The Appeals Board has held in the past the issue of whether claimant's psychological problems are directly traceable to her physical work-related injuries is an issue dealing with the nature and extent of claimant's injuries.² This contention by respondent does not raise one of the issues identified as a jurisdictional issue listed in K.S.A. 1998 Supp. 44-534(a) and does not otherwise constitute an allegation that the Administrative Law Judge exceeded her jurisdiction. Thus, the Appeals Board finds, for preliminary hearing purposes, the appeal by the respondent should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal of respondent should be, and is hereby, dismissed and Administrative Law Judge Nelsonna Potts Barnes' September 3, 1999, preliminary hearing Order remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of November 1999.

BOARD MEMBER

c: Terry J. Torline, Wichita, KS
Carlos J. Nolla-Corretjer, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director

¹ See K.S.A. 1998 Supp. 44-551(b)(2)(A).

² See Gilman v. Olathe Medical Center, WCAB Docket No. 211,937 (June 1997).